

# FAX TRANSMISSION

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**To:** Ms. Tina Gonzales  
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Sacramento, California.

**Date:** October 6, 2006

**Fax #:** 916- 445-6401

**Pages:** 45 including this cover sheet.

**From:** Robert Fourt

**Subject:** Response to Cal -EPA 2006 Evaluation Report

**COMMENTS:** October 6, 2006 Submittal - Hard copy to follow

**COPY**



## ENVIRONMENTAL HEALTH DEPARTMENT LAND USE AGENCY

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October 6, 2006

Ms. Tina Gonzales  
California Environmental Protection Agency - Unified Program Section  
1001 'I' Street  
P. O. Box 2815  
Sacramento, California 95812

Re: Response to Cal -EPA 2006 Evaluation Report

Dear Ms. Gonzales:

Amador County Environmental Health Department, The Certified Unified Program Agency (CUPA) for Amador County, is pleased to submit this response to the September 8, 2006 request for follow up documentation on the deficiencies reported in the February 2005 CUPA evaluation. The following concerns were outlined in the September 8, 2006 review package:

### Self Audit Standards

The CUPA is not completing Self-Audits by September 30<sup>th</sup> as required. - Self Audit completed 9/30/06.

### Administrative Standards

The CUPA Permit Procedures Plan does not contain a flow chart including time lines and appeals process. The CUPA Permit Procedures Plan does not contain an addendum that will be used to document permit conditions for each applicable element of the Unified Program - CUPA Permit Procedures Plan Manual contains HMBP and UST checklists. (see Attached Permit Procedures Plan)

The CUPA does not have a process and time frames to follow for correction of deficiencies. - An Inspection and Enforcement Plan has been drafted and submitted to management for review and approval. (see Attached Draft Inspection and Enforcement Plan)

The CUPA does not have AEO forms incorporated in the Inspection and Enforcement Plan. - Administrative Enforcement Orders have been incorporated in the An Inspection and Enforcement Plan. After approval, the Administrative Enforcement Order forms will be placed on County website (see Attached Draft Inspection and Enforcement Plan)

### Enforcement Standards

The CUPA does not have current technical staff trained in writing enforcement orders. - CUPA staff attended the 2006 CUPA Conference and attended sessions on UST, Hazardous Materials

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California Environmental Protection Agency - Unified Program Section  
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Business Plans, and Hazardous Waste Generator Programs. Since many the courses ran concurrently, it was not possible to take advantage of all offerings. Staff attended training offered by the State Water Resources Control Board on evaluation of underground tank releases. The lack of resources limits the amount of time available for training. Training will obtained as time permits and training becomes available. Please provide a listing of qualifying courses which meet the requirements of §15260(d) (3) (B).

Reporting Standards

The CUPA is not completing Summary Reports by September 30<sup>th</sup> each year. - The 2005- 2006 Summary Report was submitted by September 30, 2006.

Hazardous Materials Release Response Plans and Inventories Program

✓ The CUPA Area Plan does not contain all required elements. -The area plan will be reviewed for consistency with T19 2722-2728 and the OES coordinator provided with a copy of revised Plan.

Inspection Standards

The CUPA is not inspecting all the businesses subject to the business plan program for compliance at least once every three years. - Business Plan inspections have not been conducted due to lack of resources. The 2006 self audit addresses this concern and identifies corrective measures. (see Attached 2006 self audit)

The CUPA is not meeting the requirements of the annual inventory reporting certification requirements. The CUPA is not requiring businesses, subject to the hazardous materials reporting requirements, to annually submit their hazardous material inventory or certification statement. - An inventory reporting, contact update, and certification statement is sent with the annual billing for completion prior to issuing an operating permit. (see Attached HMBP Certification Statement).

Thank you for your help in implementing the Unified Program in Amador County. Please call me at (209) 223-6439 if you have any questions.

Very truly yours,



Robert Fourt, REHS  
Environmental Health Specialist

RF:ew

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Attachments: 2006 self audit  
Permit Procedures Plan  
Draft Inspection and Enforcement Plan  
HMBP Certification Statement

cc: Michael Israel, Director, Amador County Environmental Health Department

haz mat\self audit\self audit final\2005 evaluation corrections

**Amador County Environmental Health Department  
CUPA Program Status Summary 2005/2006**

**Introduction – Program Overview**

**Program Elements:**

The Amador County Environmental Health Department (ACEHD), the designated Consolidated Unified Program Agency (CUPA), implements the Hazardous Materials Business Plan (HMBP) Program, Underground Storage Tank (UST) Program, Hazardous Waste Generator – Tiered Permitting Hazardous Waste On-Site Treatment (Generator) Programs, California Accidental Release Prevention (Cal-ARP), and the Above Ground Storage Tank (AST) Programs.

**Agency Participation:**

ACEHD CUPA has no Participating Agencies (PA). ACEHD implements the CUPA programs in the incorporated cities (Jackson, Sutter Creek, Plymouth, Ione, and Amador City) and the unincorporated areas of Amador County.

**Program Activities:**

ACEHD CUPA performs routine regulatory compliance activity for all program elements and investigates hazardous materials, hazardous waste and UST complaints. CUPA staff responds to incidents at residential, business and public property locations involving hazardous materials and hazardous waste.

**Administrative:**

ACEHD CUPA conducts consolidated billing and permitting operations for all CUPA programs in accordance with the single fee system. CUPA staff have specialized technical expertise in plan review and inspections at HMBP, UST, and Cal-ARP sites.

### Notable Changes & Highlights

An Inspection and Enforcement Manual including provisions for Administrative Enforcement Orders has been drafted and submitted management and County Counsel for review. A technician position has been created which will devote approximately 30% to CUPA program administration and implementation. Preliminary discussions are underway to establishing an MOU with the Agricultural Commissioner for the collection of HMBP information from agricultural operations per 25503.5 (c) (5) Title 19 CCR. ACEHD is implementing scanning of HMBPs into a computer data base for distribution on read only computer disks to emergency responders. Annual inventory and contact update certification statements are being included with the annual billing statement. The certification statement must be completed and signed by the facility operator before an operating permit will be issued.

### Focus & Planning

Continual review of the CUPA program processes is an essential element to realizing improvements in personnel productivity, facility compliance and reduced program costs. ACEHD created a revised information sheet defining the criteria for billing classifications in the CUPA programs. Fee discounts are provided for categories where there is significant program overlap. A new combined HMP - Generator inspection form for use in combined inspections has been created.

### **Hazardous Materials Business Plan Program**

#### Program Maintenance

During FY 2004/2005, ACEHD had regulatory oversight for 180 sites having reportable quantities in the hazardous materials / business plan (HMBP) program. Submitted HMBP or HMBP renewal forms undergo a completeness review. Incomplete documents are returned to facilities with a 30-day deadline to return a complete application. Follow up meetings and letters are used to obtain

compliance. Completed HMBP and renewals are electronically scanned and paper copies transmitted to area fire departments. Routine scheduled inspections have not been implemented, as staff has focused on obtaining completed business plans.

CUPA Facilities are invoiced in early December for the following year with a January 1 payment date. Included with the invoice are an inventory, contact update, and certification statement which must be completed and signed by the facility operator before an operating permit will be issued. Facilities with outdated HMBP information are given a March 1, deadline to submit an updated HMBP. 67 review, informal request, and follow up letters were issued and 34 HMBPs processed and accepted in 2005 / 2006. This often involved multiple review and follow up letters.

#### Significant Changes to the Program

ACEHD is implementing the electronic imaging of new and updated HMBP accepted for compilation and release in electronic form to area responders. A draft Inspection and Enforcement Manual including provisions for Administrative Enforcement Orders has been drafted and submitted management and County Counsel for review.

#### Continuing Agreements / Consolidated Inspections

Preliminary discussions are underway to establishing an MOU with the Agricultural Commissioner for the collection of HMBP information from agricultural operations per 25503.5 (c) (5) Title 19 CCR.

### **Underground Storage Tank Program**

#### Program Maintenance

During FY 2004/2005, ACEHD had regulatory oversight for 33 facilities having a total of 82 underground storage tanks (UST). ACEHD also continued oversight authority for the removal, installation and upgrade of UST systems. ACEHD

performed routine regulatory compliance UST inspections at 20 facilities and 8 UST installation, removal, or upgrade activities.

ACEHD recognizes that a technically competent staff is an essential element of maintaining program efficiency. ACEHD continues to place a high emphasis on staff training needs and supports staff in attending the Annual CUPA conference and the monthly state sponsored UST Technical Advisory Group meetings. ACEHD staff was ICC UST Inspector certified in August 2005. These periodic training opportunities were supplemented by focused topical seminars or other regional technical meetings.

#### Significant Changes to the Program

UST operating permits have been modified to require that monitoring, response and site plans are to be maintained onsite.

#### Continuing Agreements / Consolidated Inspections

Where appropriate HMBP, UST, and Food Facility inspections at a single facility are consolidated into a single visit.

### **Hazardous Waste Generator & Tiered Permitting Program**

#### Program Maintenance

During FY 2004/2005, ACEHD had regulatory oversight for 53 hazardous waste (HW) generators which are included in the HMBP program. An additional 60 potential hazardous waste generators have been identified through the review of DTSC hazardous waste manifests.

#### Significant Changes to the Program

A search of the DTSC Hazardous Waste manifest data base identified 60 additional potential generator facilities that are not captured by the HMBP program



## **Above Ground Storage Tank Program**

### Program Maintenance

ACEHD continues to perform Above Ground Storage Tank (AST) inspections and document review at sites with qualifying petroleum storage. ACEHD determines whether an SPCC has been completed, advises operators of the SPCC requirement, and makes appropriate referrals to the RWQCB.

### Significant Changes to the Program

None for FY 2005/2006.

### Continuing Agreements / Consolidated Inspections

None.

## **Cal ARP Program**

### Historical Information

The number on regulated facilities dropped from 4 to 1, due to the substitution of liquid chlorine for gaseous chlorine treatment in three wastewater treatment plants.

### Program Maintenance

As much as possible, ACEHD inspections of Cal ARP facilities continue to be coordinated with the regular CUPA inspections to minimize duplication of efforts.

At this time, ACEHD has not exempted any stationary sources from the requirements of the Cal ARP program.

During the reporting period, three facilities were determined to no longer be subject to the Cal ARP regulations due to either reductions in regulated substances or process substitutions utilizing less hazardous chemicals.

### Significant Changes to the Program

None for FY 2005/2006

## Permitting

### Overview

ACEHD issues permits for all CUPA programs via a single consolidated permit and permit addendums when necessary (i.e. UST program). Permits for new facilities are initiated through a request for HMBP application. Identification of potentially regulated businesses is through building permit applications for new facilities in the unincorporated portions of the county. Identification of regulated facilities in the incorporated cities and in existing structures is by voluntary compliance or complaint.

Identification of CUPA regulated facilities and collection of complete HMBP for dissemination of HMBP's to area responders has been priority in the CUPA programs. All regulated facilities have been contacted and updated HMBP received from approximately 98 % of regulated facilities. Follow up activities continue to achieve compliance.

UST installation, upgrade and removal permits are taken at the front counter for scheduling and processing. Requests for service dates for these inspections are accommodated as much as reasonably possible. UST removal and closure activities are given a priority in order to recognized possible releases at the earliest possible moment.

Generator facilities are identified through HMBP reporting of hazardous waste generation and hazardous waste (EPA) identification numbers. HMBP facilities reporting generation of hazardous wastes are required to report an EPA) identification numbers.

Additional potential generator facilities, not captured by the HMBP program were identified through the DTSC Hazardous Waste manifest online data base. Follow up contacts and permitting of the generator facilities are planned. Two temporary household hazardous waste events were permitted under the tiered permitting permit by rule.

### Significant Changes

Implementation of the hazardous waste generator program is ongoing with the issuance of small quantity generator / conditionally exempt generator permits in fiscal year 2006 2007. Additional of potential hazardous waste generated facilities not captured by the HMBP were identified through the DTSC hazardous waste manifests. Preliminary discussions on the regulation of universal waste retail collection centers which collect florescent tubes and dry cell batteries for disposal through the permanent Household hazardous waste disposal facility are ongoing.

## **Inspection**

### Overview

Completion of UST facilities at mandated frequency levels continues to be a top priority for ACEHD. UST facility inspections are coordinated with the required annual leak detection equipment maintenance and secondary containment testing.

Due to a lack of resources and demand of other programs HMPB and generator inspections have not been conducted on a regular schedule. Facility inspections have been conducted on a complaint basis.

### Significant Changes

Due to an increased focus on the collection of HMBP information the number of UST inspections decreased. With the compilation of updated HMBP plans it is expected that additional resources can be dedicated to the inspection programs.

## **Enforcement**

### Overview

ACEHD has continued to achieve compliance through education and outreach rather than through traditional cite and fine enforcement methods. These methods, although ultimately successful in achieving compliance are resource intensive often requiring multiple meetings and site visits. With the maturing of the CUPA programs and increased inspections, the implementation of a more traditional

enforcement program is anticipated. An Inspection and Enforcement Manual including provisions for Administrative Enforcement Orders has been drafted and submitted management and County Counsel for review.

### **Emergency Response**

When requested, ACEHD deploys an Environmental Specialist to all hazardous materials incidents within Amador County. ACEHD does not maintain an on call staff but individual staff respond as available to hazardous materials incidents in conjunction with City, County, and State Fire Protection Agencies, law enforcement and other local and state agencies. ACEHD's role is to provide chemical / biological advice, to represent the Health Officer, contact the property owner, investigate for enforcement purposes, oversee site clean-up and deem the site safe.

### **Single Fee System Activities**

#### Maintenance

ACEHD implements a single fee system program. CUPA Facilities are invoiced in early December for the following year with a January 1 payment date. Included with the invoice are an inventory, contact update, and certification statement which must be completed and signed by the facility operator before an operating permit will be issued. Facilities with outdated HMBP information are given a March 1, 2006 deadline to submit an updated HMBP. Operating permits are not issued without fee payment and an HMBP certification statement.

Follow up letters are issued monthly and a 50 % delinquency penalty assessed after 90 days. Facilities that are delinquent greater than 90 days are referred to collections or subject to enforcement action for operating without a valid permit.

### **Fee Accountability Program**

Fees are set at a cost recovery rate recommended for the ACEHD by a cost study conducted by the Government Finance Research in March 2006 and approved by the Amador County Board of Supervisors. The adopted fees are then input into

Envision for tracking through its accounts receivable fields. Facilities are billed annually for their applicable program elements. Data queries are routinely run to ensure that amounts billed are correct.

### **Program Deficiencies**

#### **Lack of Resources**

ACEHD staffed are tasks with multiple programs which compete for available time. Several of the general "District" programs (Septic, Water Well, and Complaints) are time sensitive requiring immediate attention from staff. This conflicts with attempts to schedule routine CUPA inspections at regular intervals. An estimate of the required resources necessary to fully implement the CUPA Programs (appendix ) was conducted as part of the self audit. Approximately 1165 hours are estimated to fully implement the existing HMBP / UST Programs and approximately 1893 hours to implement all of the CUPA Programs. Government Finance Research estimates that approximately 1388 hours are available for program work indicating that 0.84 PY are required for the existing CUPA Programs and 1.4 PY need for the complete CUPA Programs.

#### **Limited Ability to Identify Regulated Facilities**

A traditional method of identifying potentially regulated businesses is through review of Business Licenses which disclose the activities at a facility. Business Licenses are not required in the unincorporated portions of Amador County and the five incorporated Cities operate separate business licensing programs. The absence of an Amador County Business License program and lack of reporting of potentially regulated business by the incorporated Cities restricts the ability to efficiently identify potentially regulated businesses.

Proposed Program Improvements

Dedication of a full time CUPA Environmental Health Specialist and part time utilization of an Environmental Health Technician to conduct less complex routine inspections will allow for the implementation of full CUPA Program. Transitioning from an education and out reach enforcement to a more traditional cite and fine approach will reduce the staff time spent in compliance meeting and increase the time available for facility inspections. Dedication of additional resources and modification of the existing enforcement policy will require the approval of the Amador County Board of Supervisors and the concurrence of the District Attorney. A draft Inspection and Enforcement Manual has been submitted management for review.

Establishment of an Amador County Business License program with a licensing requirement that use of hazardous materials be disclosed as a condition of the permit would identify potentially regulated businesses. Inclusion of a similar requirement in the existing incorporated Cities business license program would identify businesses using hazardous materials in the incorporated areas.

**Amador County Consolidated Unified Program Agency - Time Estimate 10/5/2006****CUPA  
Management**

40

**Business Plan**

Business Plan	Large	Small	Fuel	Existing Program
Facilities	180	40	88	52
Hours / Plan		7	5	2.5
Hours/ year		280	440	130
				850

Total 1164.71

**UST**

	UST 1st	UST 2nd	Hours/ year
Facilities	33	54	
Hours / Plan	4.33	1.33	
Hours/ year	142.89	71.82	214.71
			214.71

**UST Install / Closures**

Closures	10	5	50	
Installations	1	10	10	
Hours/ year			60	60

**Expanded Programs**

728

**Agricultural Program**

40

**Generator**

	LQG	SQG	CESQG	PBR *
	2	79	19	2
New Facilities		60	5	
Facilities	167	2	139	24
Hours / Plan		6	4	3
Hours/ year		12	556	72
				8
				648

**Area Plan - Emergency Response**

Estimate

40

**CUPA Program Total Staff Time**

1892.71

Time Estimates for Permit Application Review and Annual Processing, and Initial Inspection does not Include Meetings, Follow Up Correspondence, Follow up Inspections, or Enforcement Actions

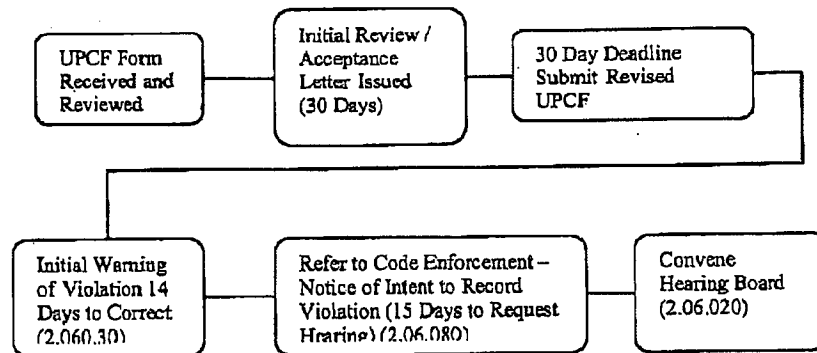
Productive Billable Hours 1388

Est. Staff Requirements	Existing Program	0.8391282	PY
	Expanded Program	1.3636239	PY

### Consolidated Permit Program Plan

The Amador County Environmental Health Department (ACEHD), the designated Consolidated Unified Program Agency (CUPA), implements the Hazardous Materials Business Plan (HMBP) Program, Underground Storage Tank (UST) Program, Hazardous Waste Generator – Tiered Permitting Hazardous Waste On-Site Treatment (Generator) Programs, California Accidental Release Prevention (Cal-ARP), and the Above Ground Storage Tank (AST) Programs in Amador County. Permit applications are received on the Unified Program Consolidated Form (UPCF) or requirements. UPCF Applications are reviewed within thirty days and a review letter identifying omissions in the submitted application and requesting revisions to the UPCF sent to the regulated facility. If the UPCF Application is deemed complete an acceptance letter is generated and the HMBP submitted to the local emergency responders with a cover letter. The cover letter cautions that portions of the HMBP are confidential and that access to the HMBP should be limited.

A general Hazardous Materials permit covering the HMP program is issued annually. A UST permit is issued for five years. HMP and UST permits are conditioned on compliance all permit conditions and payment annual fees. In instances of noncompliance with the initial request for an HMBP or the request for revisions to an HMBP within 30 days an initial warning is issued providing 14 days to correct the violations. Continued non compliance is referred to Code Enforcement or other action as described in the Inspection and Enforcement Policy.





**Amador County Environmental Health Department  
Consolidated Unified Program Agency (CUPA)**

**Draft INSPECTION AND ENFORCEMENT PLAN**

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## Introduction

The Amador County Environmental Health Department (ACEHD), as the Certified Unified Program Agency (CUPA), is responsible for inspection and enforcement activities associated with the following program elements:

- Hazardous Materials Business Plans (HMP). Authority: California Health & Safety Code (H&SC), Chapter 6.95, Article 1 and Title 19 of the California Code of Regulations (CCR).
- Underground Storage Tank (UST) Program. Authority: H&SC, Chapter 6.7 and Title 23 CCR.
- Hazardous Waste Generator Program. Authority: H&SC, Chapter 6.5 and Title 22 CCR.
- Tiered Permitting of Hazardous Waste On-site Treatment. Authority: H&SC, Chapter 6.5, Title 22 CCR.
- Above Ground Storage Tank (AST) Program. Authority: H&SC, Chapter 6.67.
- California Accidental Release Prevention (CalARP) Program Authority: H&SC Chapter 6.95, Article 2 and Title 19 CCR.

H&SC 25404 requires each CUPA to develop an Inspection and Enforcement Plan. This Plan has been developed to ensure the implementation of coordinated, efficient and effective inspection and enforcement procedures regarding the handling of hazardous materials/waste.

## **Inspection Plan**

### **I. General Information**

The Environmental Health Department is responsible for all inspections of facilities eligible for regulation within the CUPA programs listed above. On-site technical verification of CUPA program submittals and compliance is performed by ACEHD staff in concert with the Hazardous Materials Business Plan inspections.

### **II. Inventory of Regulated Businesses or Facilities**

Hazardous Materials Business Plans (HMP) 184  
Underground Storage Tank (UST) Facilities 33  
Above Ground Storage Tank (AST) Facilities 52  
California Accidental Release Prevention (Cal/ARP) 1  
Hazardous Waste Generators (RCRA and Non-RCRA) 107  
    Large Quantity Generators (LG) 1  
    Small Quantity Generators (SQG) 92  
    Conditionally Exempt Small Quantity Generators (CESQG) 19  
On-site Hazardous Waste Treatment 1  
    PBR – Household Hazardous Waste Facilities 1  
    Tiered Permitting of HW Onsite Treatment 1  
    Permit By Rule (PBR) 1  
    Conditionally Authorized (CA) -0  
    Conditionally Exempt (CE) - 0

### **III. Frequency of Inspections**

Hazardous Materials Business Plans - 3 years (H&SC, §25508(b))  
UST Facilities 1 year (H&SC, §25288(a))  
AST Facilities - 3 years (with HMP inspections)  
Cal/ARP - 3 years (CCR Title 19, §2775.3) Audit of RMP  
Hazardous Waste Generators (SQG) - 3 years (with HMP inspections)  
PBR – HHW Facilities - 3 years (H&SC, §25201.4(b) (2))  
CESQG - 5 years or change in ownership or activity  
Tiered Permitting - 3 years  
    On-site HW Treatment (H&SC, §25201.4(b)(2))  
    PBR, CA, CE (H&SC, §25201.4(b)(2))

### **IV. Provisions to Promote Integrated Joint, Combined, and Multi-Media**

**Inspections** - HMP inspections are combined with Hazardous Waste Generator and UST program inspections; HMP, UST, and Food Facility inspections are combined at Convenience Stores

5-28

**V. Inspector Training** - CUPA staff will receive training, as available, in the following subject areas:

- Regulatory overview hazardous materials programs
- HazCat classification and identification procedures.
- Hazardous materials chemistry.
- Health and environmental effects of hazardous substances.
- Hazardous waste classification.
- Inspection procedures and techniques.
- Sampling and instrumentation.
- Enforcement action.
- Interviewing techniques and case development.
- Collection and preservation of evidence.
- Initial HAZWOPER and subsequent refreshers.

**VII. Facility Inspection Procedures**

**A. General Protocols.** With the exception of some underground storage tank inspections, facility visits are conducted on an unannounced basis observing the following policies:

1. Always maintain a professional, courteous, and respectful demeanor.
2. Safety is the primary consideration use appropriate clothing and safety equipment (steel-toed safety boots, hardhats, etc.).
3. Always be aware of your surroundings, if safety issues arise, discontinue the inspection, document the situation, withdraw, and confer with your supervisor.
4. Always show proper County-issued identification.

**B. Pre-inspection Procedures.**

1. Each quarter the list of facilities will be reviewed and a priority placed on those facilities with the oldest date of last completed inspection. UST inspections may be scheduled in response to a contractor request.
2. Prior to an on-site inspection, an office file review of the facility will be conducted noting:

Nature and type of operation including industry and regulatory information

Fee status and contact information

Open violations or a pattern of repeat discrepancies.

Completion and adequacy of Business Plans, Emergency Response and Monitoring Plans, and financial responsibility forms.

### C. On-site Procedures.

1. Before entering facility note any unusual activity or condition such as evidence of liquid discharge to storm drain or unsafe storage of hazardous materials.
2. Provide a business card and show photo id to facility representative, state nature of inspection (complaint, routine inspection, incident), and obtain consent for inspection. If refused, leave premises and report refusal to Supervisor for follow up with written request and possible inspection warrant.
3. Request accompaniment by facility manager or other representative.
4. Perform facility walk-through following the program-specific inspection checklists and record inspection observations on inspection form
5. Confirm and document chemical inventory: types, location, and quantities and hazardous waste generation, quantities, and storage, including labeling of containers and length of storage.
6. Request review of any required site-specific environmental permits (industrial waste discharge, AGT spill prevention control and countermeasure plan).
7. Document any noted violations with photos and samples as authorized by H&SC §25185(a).
8. Review violations with representative and complete the Notice to Comply section recording noted violations, required corrective actions, and the date by which corrective action is required for each violation.
9. Typical compliance timeline is thirty (30) calendar days from the date of inspection [H&SC §25505(a)(2), Bus. Plan], [H&SC §25288(d, UST)]; [CCR 19, §2775.2(h) Cal/ARP].
10. Schedule re-inspection fourteen (14) calendar days from the date of inspection.
11. Obtain representative's signature on the inspection form, sign and date the inspection form, and issue a copy of the inspection form to the representative. If staff is unable to issue the inspection form at the time of inspection, the completed inspection form will be sent to the business via "proof of service" certified mail or delivered in person.

D. Inspection Follow-up. After completing the on-site inspection, complete file notes, print out digital photos, update permit application as appropriate, and track facility's compliance time for violations follow-up. If Class I or II (Hazardous Waste Generator) or other significant violations were observed during the inspection confer supervisor

about potential enforcement action. Review all corrective action documentation when submitted by the facility owner/operator for completeness and adequacy and close out violations

### **VIII. Hazardous Materials Business Plan (HMP) Permit Application or Renewal Office Review**

A. General Procedure. Unless listed under the exemptions listed under H&SC §25503.5., businesses or facilities that store or manage hazardous materials in quantities equaling or exceeding regulatory established threshold amounts (55 gallon liquid, 500 pounds solid and 200 cubic feet compressed gas) are required to submit a Hazardous Materials Business Plan (HMP) to the ACEHD. Regulated businesses or facilities are required to annually review and update the HMP and submit a Renewal Statement as a condition of the HMP operating permit renewal.

B. Review Process. All HMP application and HMP renewal forms will be checked for completeness and for any unusual or inconsistent entries. Incomplete or incorrect documents will be returned to the businesses or facilities for correction. These documents will be sent via "proof of service" by certified mail. Owners/operators will be given 30 calendar days to address any noted deficiencies. In the case of a minor deficiency or questionable entry, ACEHD will attempt to resolve the issue quickly via a telephone call or through other suitable means of communication.

If a business or facility fails to respond within the 30 calendar day window or if their second submittal is either significantly insufficient or incorrect, then the case will be forwarded to a Supervisor for possible enforcement action. HMP application or HMP renewal forms that are considered complete will be scanned into a PDF file and photocopied for distribution to emergency responders. A cover letter will be drafted documenting the submission of the HMP to the appropriate emergency responders. An acknowledgement letter will be drafted and sent to the facility operator along with the annual operating permit.

## **Enforcement**

### **I. Statutory Authority**

Pursuant to the California Health and Safety Code (H&SC), Chapter 6.11, §25404.1.1, if the ACEHD determines that a person has committed, or is committing, a violation of any law, regulation, permit, information request, order, variance, or other requirement that the ACEHD is authorized to enforce or implement, the ACEHD may issue an Administrative Enforcement Order requiring that the violation be corrected and imposing an administrative penalty. This authority can be used to address violations of the following requirements:

- Hazardous Waste and Tiered Permitting Program: H&SC, Chapter 6.5 (commencing with §25100).
- Underground Storage Tank Program: H&SC, Chapter 6.7 (commencing with §25280). Not including violations of corrective action requirements established by or issued pursuant to §25296.10.
- Above Ground Storage Tank Program: H&SC Chapter 6.67, §25270.5.
- Hazardous Materials Business Plans: H&SC, Chapter 6.95, Article 1 (commencing with §25500).
- California Accidental Release Prevention Program: H&SC, Chapter 6.95, Article 2 (commencing with §25531).

### **II. General Information**

It is the policy of the ACEHD to achieve compliance with applicable environmental laws and regulations through an extensive inspection program, educational outreach efforts and, if necessary, the initiation of appropriate enforcement action(s). The goal of any enforcement action is to obtain compliance in a timely manner; eliminate economic benefit realized by noncompliance; and punish violators and deter future noncompliance.

A. Timeliness. In order to achieve the maximum effectiveness from a specific enforcement action, timeliness is essential. Timely enforcement is measured from the date of the inspection or incident when the violation(s) were first detected. If an Administrative Enforcement Order (AEO) is the selected enforcement option, then the goal of the ACEHD is to issue a Final Order within 180 calendar days of the inspection or incident. If the case is to be referred to an outside enforcement agency such as the Sacramento County District Attorney's Office, then the goal is to make that referral within 60 calendar days of the date of inspection or incident.

B. Documentation. Proper documentation forms the basis for any contemplated enforcement action including:

1. Issuing adequate and proper notices describing the violations.
2. Use of photographs depicting the violations.
3. Clearly and completely documenting interviews with witnesses.
4. Sampling or otherwise preserving physical evidence.
5. Maintaining an accurate chronology of events.



**C. Roles and Responsibilities** - ACEHD staff will conduct inspections of regulated businesses/facilities; respond to complaints of alleged violations of environmental laws and/or regulations. ACEHD Environmental Health Specialists (EHS) will prepare initial warnings and notices of violation when reasonable cause exists to believe a violation has occurred. The EHS shall issue a written warning giving a suspected violator a reasonable time but not less than ten days to eliminate the violation, within which time the alleged violator may meet and confer with ACEHD. The warning shall expressly state the state law or code section of which has been violated, the specific actions which must be completed to eliminate the violation; and the actions that Amador County may take any action against the violator unless such violation is eliminated within a certain time, or a schedule for compliance established.

The warning will include the name and phone number of the EHS from whom information may be obtained. The warning may be served on a violator by certified mail (return receipt requested), first class mail, or personal service. If the violator maintains that the violation has been eliminated, the ACEHD shall determine whether the violation has been eliminated. In the event of noncompliance with the first warning, ACEHD may issue further warnings to the violator or transmit the matter to the code enforcement division for further action.

The Director of ACEHD shall review and approve proposed Administrative Enforcement Order consent agreements (orders) or the referral of the action to the code enforcement division as provided in Amador County Municipal Code Chapter 2.06 Code Enforcement (Appendix B). No warning need be given and a code enforcement officer may immediately take other action upon the request of ACEHD when there is reasonable cause to believe that the violation constitutes an immediate threat to the health and safety of any person including that of the alleged violator or to any real property.

### **III. Guidelines for Case Referral to Outside Agencies**

To the greatest extent possible, ACEHD will utilize administrative enforcement options to achieve compliance with applicable laws and regulations. However, cases will occur where action by outside agencies such as the Amador County District Attorney's office or the State Attorney General is appropriate. The following are examples of case situations that may warrant referral to an outside agency for possible enforcement action:

1. Criminal prosecution is warranted.
2. Multiple locations (facilities) are involved that may suggest an industry or company wide pattern of non-compliance.
3. The case requires additional investigation that is beyond the capability of ACEHD

The Director of the Land Use Agency, in consultation the Land Use Committee of the Board of Supervisors, will evaluate each case regarding the factors listed above and determine whether the case will be referred to an outside enforcement agency.

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#### **IV. Definitions - General**

1. **Formal Enforcement.** Formal enforcement is an action that mandates compliance and initiates a civil, criminal, or administrative process that results in an enforceable agreement or Order. Enforceable means the instrument creates an independent, affirmative obligation to comply and imposes sanctions for the prior failure to comply. Sanctions include fines and penalties as well as other tangible obligations, beyond returning to compliance, that are imposed upon the regulated business [Title 27 CCR §15110].

2. **Administrative Enforcement.** Administrative enforcement allows the ACEHD to pursue action independent of an outside prosecutorial agency. ACEHD determines the appropriate penalty based on the circumstances of the violation and the violator, and statutory or regulatory penalty criteria. The ACEHD may set the penalty and the time frame for the violator's return to compliance. If the alleged violator chooses to contest the case, ACEHD schedules a hearing at which there is the opportunity to refute the allegations and present any mitigating factors that may affect the penalty.

3. **Administrative Enforcement Order.** This includes any of the order variations including the Consent Order, Expedited Consent Order, Stipulation and Order, and Unilateral Order.

4. **Minor Violation.** Means the failure of a person to comply with any requirement or condition of any applicable law, regulation, permit, information request, order, variance, or other requirement, whether procedural or substantive, of the Unified Program that ACEHD is authorized to implement or enforce pursuant to H&SC Chapter 6.11, §25404(a) (3), and does not otherwise include any of the following:

- a. A violation that results in injury to persons or property, or that presents a significant threat to human health or the environment.
- b. A knowing willful or intentional violation.
- c. A violation that is a chronic violation, or is committed by a recalcitrant violator. In determining whether a violation is chronic or a violator is recalcitrant, ACEHD shall consider whether there is evidence indicating that the violator has engaged in a pattern of neglect or disregard with respect to applicable regulatory requirements.
- d. A violation that results in an emergency response from a public agency.
- e. A violation that enables the violator to benefit economically from the noncompliance, either by reduced costs or competitive advantage.
- f. A class I violation as provided in Chapter 6.5 of the H&SC §25117.6.
- g. A class II violation committed by a chronic or a recalcitrant violator, as provided in Chapter 6.5 of the H&SC §25117.6.
- h. A violation that hinders the ability of ACEHD to determine compliance with any other applicable local, state, or federal rule, regulation, information request, order, variance, permit, or other requirement.

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5. Respondent. A respondent is the person, business or facility that is the alleged violator.
6. Supplemental Environmental Project (SEP) means an environmentally beneficial project or projects that a business agrees to undertake in settlement of an enforcement action, but which the business is not otherwise legally required to perform.
7. Final Order means, for purposes of this guidance, an AEO that has been formally issued, with (Consent) or without the consent (Unilateral) of the respondent and has become final.

**Definitions - Hazardous Waste Generator Program**

Class I Violation. - A deviation from the requirements of the Health and Safety Code (H&SC) or any regulation, standard, requirement, or permit, or interim status document condition adopted pursuant to the H&SC, that represents a significant threat to human health or safety or the environment because of the volume of the waste, the relative hazard of the waste or the proximity of the population at risk.

A deviation that could result in a failure to ensure that hazardous waste is destined for, and delivered to, an authorized hazardous waste facility (failure to manifest hazardous waste, use of an unregistered hazardous waste transporter and treatment, storage, or disposal at an unauthorized point.)

A deviation that could result in a failure to prevent releases of hazardous waste or constituents to the environment during the active or post closure period of facility (waste stored or transported in incompatible, damaged or deteriorated containers or incompatible waste stored together.

A deviation that could result in a failure to ensure early detection of releases of hazardous waste or constituents; ensure adequate financial resources in the case of release of hazardous waste or constituents or to pay for facility closure.

A deviation that could result in a failure to perform emergency cleanup operations of, or other corrective actions for hazardous waste releases.

Class II Violation - A deviation from the requirements of the Hazardous Waste Control Law (HWCL), or regulations, permit, or grant of authorization, or conditions, standards, or requirements adopted pursuant to HWCL, that is not a Class I violation (minor violation that has been repeatedly noted and documented on previous inspections).

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**Significant Non-Complier** - A Significant Non-Complier (SNC) is a business that has caused actual exposure or substantial likelihood of exposure to hazardous waste or hazardous constituents; is a chronic (regularly found to have many Class I or Class II violations) or recalcitrant (intentionally refuses to comply with the regulatory requirements) violator; or deviates from the terms of a permit, order, settlement or decree by not meeting the requirements in a timely manner and/or by failing to perform work as required by terms of permits, orders, settlement agreements, or decrees; or substantially deviates from statutory or regulatory requirements.

Examples of potential SNCs include, but are not limited to: failure to comply with an enforcement order; having previous Class I violation(s) (within three years), repeating the same Class II violation within three years, operating a facility without a permit or other grant of authorization, disposal of hazardous waste at a non-authorized site, systemic failure to follow container/tank labeling requirements, failure to manage ignitable, reactive, or incompatible wastes as required by Title 22, CCR, §66264 and §66265.17(b) (1), (2), (3), (4), and (5), and systemic use of containers that are in poor condition.

#### **Definitions - Underground Storage Tank Program**

**Significant Violation** - The failure of a person to comply with any requirement of H&SC, Chapter 6.7 or any regulation adopted pursuant to Chapter 6.7, not including the corrective action requirements in H&SC, §25296.10 and 23 CCR, Article 11, Chapter 16, that is a violation causing, or threatens to cause a liquid release of petroleum from an underground storage tank system.

The failure of any required overfill prevention system, where the failure is causing or threatens to cause a release; or the failure of a required spill containment structure, where the failure is causing or threatens to cause a release to the environment due to a spill or overfill.

Allowing a condition that impairs the ability of an underground storage tank system to detect a liquid leak or contain a liquid release of petroleum in the manner required by law. The tampering with leak detection equipment so that the equipment is no longer capable of detecting a leak at the earliest possible opportunity.

**Chronic Violation** - A violation that is committed by a recalcitrant violator where there is evidence indicating that the violator has engaged in a pattern of neglect or disregard with respect to any requirement of Chapter 6.7 of the H&SC or of any regulation adopted pursuant to Chapter 6.7, not including the corrective action requirements in §25296.10 of the H&SC and 23 CCR, Article 11, Chapter 16.

**Imminent Threat to Human Health or Safety or the Environment** - A condition that requires an immediate action to prevent, reduce or mitigate the actual or potential damages to human health or safety or the environment.

## **V. Administrative Enforcement Order**

ACEHD is authorized by Chapter 6.11 of the H&SC §25404.1.1 to issue an Administrative Enforcement Order (AEO) if it has determined that a person has committed, or is committing, a violation of any law, regulation, permit, information request, order, variance, or other requirement that ACEHD is authorized to enforce or implement pursuant to Chapter 6.11, Division 20 of the H&SC and to impose administrative penalties.

The goal of the AEO is, among other things, to return a facility to compliance in a timely manner; eliminate economic benefit realized by the noncompliant facility, and create deterrence against future noncompliance. ACEHD will encourage the respondent to enter into settlement discussions to expedite achieving the enforcement goal using the administrative order process. Settlement discussions can occur at any time, prior to issuance of a Final Order; after issuance of a Final Order and during the period before and after the appeal is heard by a Hearing Officer.

Based on information provided by ACEHD EHS, the Director of ACEHD will review each case and provide recommendation(s) to the Director of the Land Use Agency, regarding whether the case should be referred to an outside agency for enforcement action or handled through the Administrative Enforcement Order (AEO) process. If the AEO process is approved the Director of ACEHD will determine the proper disposition of the case and, if necessary, the appropriate AEO option to be utilized. H&SC §25187 provides multiple options for initiating, settling, and issuing administrative orders depending on the circumstances of each case.

If referral to an outside agency for enforcement action is recommended, the Land Use Committee of the Board of Supervisors will be consulted and an outside enforcement agency recommended.

## **VI. Administrative Enforcement Order Process Alternatives**

### **A. Show Cause Letter**

The violations do not pose an imminent and substantial threat to public health or the environment and have not resulted in a significant release to the environment. The business is not a repeat violator, does not have a history of noncompliance, and has not been recalcitrant or uncooperative. Statutory timeframes for filing a notice have not started and a deadline for compliance has not been established.

A "Show Cause" letter may be issued to a business, notifying it that ACEHD is planning to take an AEO action and encouraging the business to discuss settlement. The Show Cause letter is a public document and is not enforcement confidential. It does not constitute a formal enforcement action but establishes ACEHD's intent to pursue formal enforcement and encourages a consensual resolution. The goal of this process is to enter

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into settlement discussions between the business and ACEHD and reach agreement on compliance, timeliness, and penalties; and formalize the agreement in a Final Order.

#### B. Consent Order

The violations are not serious, simple and easily understood, the compliance issues are straightforward, and no compliance schedule is required. The business is not a recalcitrant or repeat offender and the anticipated penalties are relatively small and prompt settlement is expected.

Under this alternative, ACEHD may issue a Consent Order to the business and request, in a cover letter, concurrence and signature to finalize the Order. This alternative provides a means of resolution on simple cases, where the respondent is not likely to contest the Order. The Consent Order alternative should be used for less serious, simple, and easily understood violations and when the compliance issues are straightforward. The Consent Order is appropriate when the business is not a recalcitrant/repeat violator, the penalties are relatively small, a compliance schedule is not required, and a prompt settlement is anticipated.

#### C. Stipulation and Order

A Unilateral Order has been issued and the business has requested settlement discussions which have led to an agreement with the business on compliance timelines and penalties. The ACEHD does not wish to restate the violations cited in the Unilateral Order.

A Stipulation and Order is a mechanism that ACEHD should use if it comes to an agreement (a stipulation) with a respondent after a Unilateral Order has been issued. A Consent Order can also be used. Although preferable, a Stipulation and Order does not require a restatement of the violations identified in the Unilateral Order. For this reason, the use of a Stipulation and Order may be more expeditious than the use of a Consent Order, in certain situations. The Stipulation and Order alternative may be appropriate when a Unilateral AEO has already been issued for the violation and the business has requested settlement discussions after service of the draft Unilateral AEO. The settlement discussions have led to an agreement with the business on compliance timelines and penalties and ACEHD wishes to avoid restating the violations cited in the Unilateral Order.

#### D. Unilateral Order (Unilateral Orders are not final until the "Hearing Period" has passed.)

The business is a repeat violator or has a history of noncompliance. The violations pose an imminent and substantial threat to public health or the environment; or have resulted in a significant release to the environment. The Unilateral Order doesn't allow for consideration of the business's response prior to formal public action. Unilateral Orders are not final until the "Hearing Period" has passed.

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ACEHD will issue a Unilateral Order to the business/facility, without prior discussion or negotiation. The Show Cause alternative anticipates the possibility of the issuance of a Unilateral Order as an outcome if a settlement cannot be reached. This alternative utilizes the issuance of a Unilateral Order as the initial step. The Unilateral Order alternative is appropriate when the business/facility is a repeat violator, has a history of being uncooperative, noncompliance, or recalcitrant. The Unilateral Order should be used when the violations pose an imminent and substantial threat to public health or the environment; or have resulted in a significant release to the environment. The Unilateral Order can be a necessary escalation when settlement is not achieved with the Show Cause alternative.

When preparing a Unilateral Order, all of the following documents must be included in the package served on the respondent:

- (1) A copy of the signed Order.
- (2) All exhibits or attachments referred to in the Order.
- (3) Statement to the respondent.
- (4) A copy of proof of service.
- (5) Cover letter to respondent.
- (6) Two copies of Notice of Defense (NOD).

An Order shall be served in person or by "proof of service" certified mail. If a Notice of Defense (NOD) is not received within 20 calendar days of service of the Order, the Order becomes final. The additional 5 calendar days (from the 15-day statutory requirement) is to allow for mail delivery time. A proof of service form must be completed and included in the package.

There are two situations in which a Unilateral Order may be amended:

When the respondent files a request for amendment that is agreed to by the ACEHD, ACEHD will make the appropriate amendments to the Order and send a copy to the respondent. This action does not constitute a new Order and does not create new appeal rights. When ACEHD determines that a correction to the order is necessary. The issuance of an amended Unilateral Order in this situation requires the re-issuance of the complete service package and may create new appeal rights.

If ACEHD decides to withdraw a Unilateral Order, a Notice of Dismissal must be completed with a letter, with return receipt requested, officially notifying the respondent that the Order is being withdrawn.

#### E. Settlement Discussions

Settlement discussions between ACEHD and the business/facility owner or operator can occur at any time in the process. Statutory time frames for requesting a hearing may be stayed by agreement between the business/facility owner or operator and ACEHD during the course of settlement discussions. ACEHD will set a time and place for any settlement discussion meeting. If ACEHD and the business/facility owner or operator is able to reach a settlement, ACEHD will issue either a Consent Order or Stipulation and Order.

At a minimum, a Consent Order or Stipulation and Order shall mandate compliance with applicable sections of Federal, State and Local statutes, regulations and/or ordinances; payment of fees and/or costs due to ACEHD; and payment to ACEHD of any penalty(s) assessed.

Failure to comply with any term of the Settlement Agreement shall void the Agreement and the ACEHD may proceed with any and all actions lawfully available. However, so long as the Respondent well and faithfully performs under the Agreement, the ACEHD shall suspend any enforcement actions associated with the subject violation. Where the Respondent has waived the right to a hearing or where ACEHD and the party have entered into a settlement agreement, the order shall not be subject to review by any court or agency.

#### **VI. Failure to Return to Compliance Notifications**

On a quarterly basis, ACEHD will identify businesses and facilities with documented minor violations that have not been corrected within stipulated deadlines. These businesses and facilities will be issued a "Failure to Return to Compliance" (FRC) notice stating the record of failure to correct the noted discrepancies or submit documentation of the corrective actions and the possibility of administrative enforcement actions if subsequent re-inspection reveals uncorrected violations. The FRC notice will include the date of their most recent inspection and notification that they are subject to re-inspection and re-inspection fees.

In order to avoid a re-inspection and any follow-up enforcement actions, the business or facility must provide proof of correction of all open violations to ACEHD not later than twenty (20) calendar days of the date of the FRC letter. Not later than sixty (60) calendar days of the date of the FRC letters, ACEHD staff will review all businesses and facilities that continue to have open violations for targeted re-inspections. Administrative enforcement actions will be initiated for those businesses or facilities where re-inspections reveal uncorrected violations.

#### **VII. Re-inspections**

A re-inspection is defined as any field inspection conducted outside of the required regulatory frequency. Re-inspections will be conducted at the expense of the affected facility to confirm that necessary action(s) have been completed so as to achieve compliance after one or more Class I or II violations or any other violation deemed significant or major have been documented.

Re-inspections will be conducted when the affected facility has been placed in a monitor status due to repeated significant violations and reasonable doubt that the facility will remain in compliance with applicable sections of environmental statutes, regulations or local ordinances. Re-inspections will be conducted to confirm that necessary action(s) have been completed so as to achieve compliance after numerous minor violations or violations that have been determined not to not pose a serious threat to human health and



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the environment have been documented and no proof of corrective action or compliance has been submitted to ACEHD.

### **VIII. Revocation, Modification or Suspension of Permit**

Any permit issued by the Amador County CUPA pursuant to California Health and Safety Code (H&SC), Chapter 6.11, §25404.1.1 may be revoked, modified or suspended during its term for obtaining the permit by misrepresentation or intentional failure to fully disclose all relevant facts, a change in condition that requires modification or termination of the operation in question, or violation of any permit condition. ACEHD may revoke, modify, or suspend a permit by issuing a written notice (Notice) stating the reasons therefore, and serving same together with a copy of the applicable laws and regulations a Notice of Defense form upon the holder of the permit. The revocation, modification or suspension shall become effective fifteen (15) calendar days after service of the Notice, unless the holder of the permit enters into a settlement agreement with ACEHD or appeals the Notice. If such an appeal is filed following Amador County Municipal Code Chapter 2.06 Code Enforcement within the stated deadline, the revocation, modification or suspension shall not become effective until a final decision on the appeal is issued. Delivery shall be deemed complete upon either personal delivery to the permit holder or through proof of service by certified mail.

### **XI. Cease and Desist Orders**

ACEHD may issue a Cease and Desist Order (Order) directing the owner or operator or any other person responsible for any violation of the requirements of a permit issued by the Amador County CUPA pursuant to California Health and Safety Code (H&SC), Chapter 6.11, §25404.1.1 to immediately discontinue any action that results in a violation of the requirements listed in Section I of the Enforcement Policy. The Order may also require the cleanup or remediation of the area or media affected by the violation. The Order shall state that the recipient has a right to appeal the matter as set forth in this policy and Amador County Municipal Code Chapter 2.06 Code Enforcement and that the recipient or the owner or operator may be liable for all enforcement costs incurred by the County in correcting the violation. Delivery shall be deemed complete upon either personal delivery to the recipient or through proof of service by certified mail.

### **X. Underground Storage Tank Red Tag Procedures**

Upon discovery of a significant violation that poses an imminent threat to human health or safety or the environment, ACEHD EHS may immediately affix a red tag to the top of the fill pipe of the non-compliant underground storage tank system. Upon discovery of a significant violation that does not pose an imminent threat to human health or safety or the environment and that is not otherwise exempt pursuant to H&SC §2715.3, ACEHD may issue a notice of violation to the owner or operator. If the owner or operator fails to correct the violation within seven (7) calendar days from the receipt of the notice, ACEHD may affix a red tag to the top of the fill pipe of the non-compliant underground storage tank system.

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Before affixing any red tag, the Environmental Specialist shall document the product level in the tank. No owner or operator of an underground storage tank system may deposit or allow for the deposit of any petroleum product into a tank which has a red tag affixed. Upon notification by the owner or operator that the significant violation has been corrected, ACEHD shall inspect the underground storage tank system within five (5) calendar days to determine whether the system continues to be in violation. If it is determined that the system is no longer in significant violation, ACEHD shall immediately remove the red tag. Upon removal of the red tag from an underground storage tank system, ACEHD shall document the product level in the tank.

#### **XI. Administrative Hearing Process**

Section 25404.1.1 of the H&SC allows the business/facility owner or operator (Respondent) to request a hearing on the Order within fifteen (15) calendar days after service of the Order or Notice. This timeframe cannot be extended. A request for a hearing is referred to in Section 25404.1.1 as a "Notice of Defense (NOD)." The NOD must be filed with ACEHD within fifteen (15) calendar days of service of the Order or Notice. It is acceptable if the NOD is postmarked within that 15-day period. If the Respondent does not submit a NOD within the 15 days after service, the Order or Notice becomes final.

The Respondent may specify in the NOD one of two hearing processes; an administrative law judge available through a Cal-EPA contract, or the appeal process provided in Amador County Municipal Code Chapter 2.06 Code Enforcement. If ACEHD receives a NOD within the fifteen (15) calendar-day time period, it must immediately transmit the NOD to the Amador County Counsel, who will arrange for the hearing. A cover letter must be sent to accompany the NOD notifying the Respondent of the hearing date. The hearing must commence within 90 calendar days of receipt of the NOD. The 90 day deadline may be extended upon mutual agreement.

ACEHD will be represented by County Counsel during the hearing process. ACEHD will remain in contact with the Respondent and offer the opportunity to settle the case prior to the hearing date. After the hearing, a proposed decision should be issued to ACEHD within thirty (30) calendar days. To adopt the proposed decision, ACEHD will serve the Respondent with a letter, stating that it is adopting the proposed decision, and serves this package on the business. Such Orders are effective and final upon issuance, and the business has 30 calendar days to make any stipulated payment. A copy of the Order must be served by personal service or by "proof of service" certified mail.

Cal-EPA has entered into a contract with the Department of General Services, Office of Administrative Hearings (OAH) to fund requested hearings on Administrative Enforcement Orders (AEO) issued by CUPA. OAH agrees to provide administrative law judges, clerical support, and hearing reporters as may be needed to conduct hearings. The hearings will be conducted as requested to resolve AEO pursuant to Chapter 6.5, §25187 and Chapter 6.11, subsection (a) of §25404.1.1 of the H&SC for violations of

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Chapter 6.5 (commencing with §25100), Chapter 6.7 (commencing with §25280), Article 1 (commencing with §25500) of Chapter 6.95, Article 2 (commencing with §25531) of Chapter 6.95 and §25270.5. 3.

Hearings on an AEO will be conducted pursuant to H&SC §25404.1 and Government Code §11400 et seq. OAH should be called ((916) 445-4926) to schedule a hearing. Inform the OAH Calendar Office that services are to be provided under Interagency Agreement Contract. The OAH Calendar Office will schedule the hearing at a place and time that is mutually agreeable to the OAH and ACEHD. The Office of Administrative Hearings must be provided with a copy of the AEO and the Notice of Defense (NOD) at

Office of Administrative Hearings  
560 J Street  
Suite 300  
Sacramento, CA 95814

ACEHD will provide notices of scheduled hearings to all applicable Parties according to pertinent law. A copy of the notice of scheduled hearing shall also be mailed to:

Cal-EPA/Unified Program  
1001 I Street  
Sacramento, CA 95812

The OAH will provide ACEHD with a proposed decision containing the findings of fact, conclusions of law and a final deposition regarding each issue contested. ACEHD can choose to adopt the OAH proposed decision; or adopt portions of the proposed decision while revising other portions; or reject the proposed decision. ACEHD will issue the final order to the respondent and provides copies by mail to OAH and Cal-EPA/Unified Program. Case files shall be retained by OAH for a period of six (6) months, at which time OAH will notify ACEHD to pick up the case files.

Within thirty (30) calendar days after service of a copy of a Decision and Order issued by ACEHD, the business/facility owner or operator (Respondent) may file with the Superior Court, a Petition for Writ of Mandate for Review of the Decision and Order. The filing of such Petition for Writ of Mandate does not stay any penalties assessed. Any Respondent that fails to file the Petition within this thirty (30) calendar day period may not challenge the "Final" Unilateral Order [Government Code §11523].

## **XII. Administrative Penalties**

### **A. General Policy**

The following will be considered when calculating the amount of an administrative penalty:

- a. The nature, circumstances, extent, and gravity of the violation.

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- b. The violator's efforts to prevent, abate, or clean up conditions posing a threat to public health or the environment.
- c. The violator's ability to pay.
- d. The deterrent affect of the penalty

## B. Steps in Determining Penalties

1. Initial Penalty. ACEHD will determine an initial penalty for each violation by considering the actual and potential harm and the extent of the deviation from hazardous waste management requirements.

a. Assigning degrees of actual and potential harm.

- (1) Major – the characteristics and/or amount of the substance involved present a major threat to human health or safety or the environment and the circumstances of the violation indicate a high potential for harm.
- (2) Moderate – the characteristics and/or amount of the substance involved do not present a major threat and the likelihood of harm from noncompliance is not high.
- (3) Minimal – the overall threat to human health or the environment is low.

b. A violation must involve the actual management of a hazardous substance for it to have a major potential for harm.

c. Assigning degrees of extent of the deviation.

- (1) Major – the act deviates from the requirement to such an extent that the requirement is completely ignored or the function of the requirement is rendered ineffective because some of its provisions are not complied with.
- (2) Moderate – the act deviates from the requirement but functions to some extent.
- (3) Minimal – the act deviates from the requirement but functions nearly as intended.

d. For requirements with several components, consider the extent of the violation in terms of the most significant component.

## 2. Adjusted Initial Penalty

a. The initial penalty may be adjusted based on the violator's intent in committing the infraction. The following factors will be considered as a basis for adjustment.

### Downward adjustment

100% - Violation was completely beyond the control of the violator.

0% to 50% - Violation occurred even though good faith efforts to comply with regulations were made.

No adjustment - Violation indicated neither good faith efforts nor intentional failure to comply.

### Upward adjustment

50% to 100% Violation was the result of intentional failure to comply.

b. Economic Benefit Adjustment. The initial penalty may be increased if, in the opinion of ACEHD, the violator realized significant economic benefit as a result of the failure to comply.

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- (1) The adjustment to the initial penalty cannot exceed the statutory maximum.
- (2) Economic benefits to consider include: avoided or delayed costs, or increased profits.

3. Multiple Violations. A single penalty may be assessed for multiple violations for the following situations:

- a. The facility has violated the same requirement in different locations or units within the facility.
- b. The facility has violated the same requirement on different days. This would not be appropriate if the facility has been notified of the violation and has had sufficient time to correct the violation.

4. Multi-day Violations. On a case-by-case basis, for days following the first day of violation, the multi-day component of the penalty may be calculated by determining 2% of the adjusted initial penalty times the number of days after the initial day.

5. Base Penalty. The base penalty for a one day violation occurrence is the adjusted initial penalty. The base penalty for multi-day violations is the adjusted initial penalty for the first day of the violation plus the penalty for the additional days of the violation.

6. Total Base Penalty. The total base penalty is the sum of all base penalties for all violations incurred at a given facility.

7. Final Penalty Adjustments. Adjustments may be made to the total base penalty based on the following factors.

a. Adjustment factors for cooperation.

25 % downward adjustment - Violator exceeded minimum requirements in returning to compliance or returned to compliance faster than requested.

No adjustment - Violator demonstrated a cooperative effort.

25 % upward adjustment - Violator failed to cooperate, delayed compliance, created unnecessary obstacles to achieving compliance, or the compliance submittal failed to meet requirements.

50 % to 100 % upward adjustment - Violator intentionally failed to return to compliance with regulations or to allow cleanup operations to take place. This does not include refusal to allow inspection.

b. Adjustment for compliance history. - The total base penalty may be adjusted upward or downward based on the facility's compliance history. Previous violations at the site should receive more weight than previous violations at another site owned or operated by the same person. Recent violations should receive more weight than older violations. The same or substantially similar previous violations should receive more weight than previous unrelated violations. Upward adjustments of up to 100% can be made if a facility has a consistent history of noncompliance over the past five (5) years.

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c. Ability to pay adjustments. No adjustments for ability to pay may be made if the penalty has been adjusted upward because of failure to cooperate or because of the facility's poor compliance history. Adjustments to the total base penalty may be made if immediate payment of the final penalty would cause financial hardship. In this case, consideration may be given to payments extended over a certain term. If extending the penalty over a period of time would cause extreme financial hardship. In this case, consideration may be given to reduce the total base penalty.

8. Final Penalty. The final penalty consists of the total base penalty with all adjustments made.

### C. Initial Penalties

1. Hazardous Waste. For violations of H&SC Chapter 6.5, the violator shall be liable for penalties as provided in §25189.2 (a-c).

a. The total penalty calculated for any single violation shall not exceed the amount specified in statute; \$25,000 per day, per violation (H&SC, §25189.2).

b. The following matrix will be used to determine initial penalty for a hazardous waste violation:

#### Initial Penalty Matrix – Hazardous Waste (per day of violation)

Violation of Chapter 6.5, Division 20 H&SC

Actual – Potential Harm	Major	Moderate	Minimal
Major Deviation	\$25,000 to \$20,000	\$20,000 to \$15,000	\$15,000 to \$6,000
Moderate Deviation	\$20,000 to \$15,000	\$15,000 to \$6,000	\$6,000 to \$2,000
Minimum Deviation	\$15,000 to \$6,000	\$6,000 to \$2,000	\$2,000 to \$1,000

2. Underground Storage Tanks. For violations of H&SC Chapter 6.7, the violator shall be liable for penalties as provided in §25299 (a-c).

a. H&SC §25299 (a) and (b) call for penalties no less than \$500 or no more than \$5,000 per day, per violation, per Underground Storage Tank.

b. For violations of H&SC §25299 (c), the respondent is liable for no more than \$5,000 per day, per violation, per Underground Storage Tank.

c. The following matrix will be used to determine initial penalty for an underground storage tank system violation:

#### Initial Penalty Matrix – Underground Storage Tanks (per day of violation)

Violation of Chapter 6.7, Division 20 H&SC

Actual – Potential Harm	Major	Moderate	Minimal
Major Deviation	\$5,000 to \$3,000	\$3,000 to \$2,000	\$2,000 to \$1,000
Moderate Deviation	\$3,000 to \$2,000	\$3,000 to \$2,000	\$2,000 to \$1,000
Minimum Deviation	\$2,000 to \$1,000	\$1,000 to \$500	\$500 to \$0.00

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3. Hazardous Materials Business Plan Program. For violations of H&SC §25514.5. Any business/facility that violates Article 1, Chapter 6.95, Division 20 of the H&SC is liable for an amount not greater than \$2,000 for each day in which the violation occurs, or greater than \$5,000 for each day in which the violation occurs for any business that knowingly violates after reasonable notice of the violation.

Initial Penalty Matrix – Hazardous Materials Business Plan (per day of violation)

Violation of Article 1, Chapter 6.95, Division 20 H&SC

Actual – Potential Harm	Major	Moderate	Minimal
Major Deviation	\$2,000 to \$1,200	\$1,200 to \$800	\$800 to \$400
Moderate Deviation	\$1,200 to \$800	\$800 to \$400	\$400 to \$200
Minimum Deviation	\$800 to \$400	\$400 to \$200	\$200 to \$0.00

Knowing Violation of Article 1, Chapter 6.95, Division 20 H&SC after Reasonable Notice

Actual – Potential Harm	Major	Moderate	Minimal
Major Deviation	\$5,000 to \$3,000	\$3,000 to \$2,000	\$2,000 to \$1,000
Moderate Deviation	\$3,000 to \$2,000	\$2,000 to \$1,000	\$1,000 to \$500
Minimum Deviation	\$2,000 to \$1,000	\$1,000 to \$50000	\$500 to \$0.00

4. Failure to Report Unauthorized Spill or Release of Hazardous Material or Waste

a. Businesses or facilities shall, upon discovery, immediately report any release or threatened release of a hazardous material to ACEHD and the Governor's Office of Emergency Services Warning Center. In addition, each business or facility and any employee, authorized representative, agent, or designee of the business or facility shall provide all state, city, county fire or public health or safety personnel and emergency rescue personnel with access to the facility.

b. Pursuant to §25514.5 of the H&SC, any business or facility that violates these requirements are civilly liable in an amount not to exceed \$2,000 per day for each violation, or greater than \$5,000 for each day in which the violation occurs for any business that knowingly violates after reasonable notice of the violation.

Initial Penalty Matrix – Unreported Spills or Releases (per day of violation)

Violation of §25514.5(a) H&SC

Actual – Potential Harm	Major	Moderate	Minimal
Major Deviation	\$2,000 to \$1,200	\$1,200 to \$800	\$800 to \$400
Moderate Deviation	\$1,200 to \$800	\$800 to \$400000	\$400 to \$200
Minimum Deviation	\$800 to \$400000	\$400 to \$200	\$200 to \$0.00

Knowing Violation of §25514.5(b) H&SC after Reasonable Notice

Actual – Potential Harm	Major	Moderate	Minimal
Major Deviation	\$5,000 to \$3,000	\$3,000 to \$2,000	\$2,000 to \$1,000
Moderate Deviation	\$3,000 to \$2,000	\$2,000 to \$1,000	\$1,000 to \$500
Minimum Deviation	\$2,000 to \$1,000	\$1,000 to \$50000	\$500 to \$0.00

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### 5. California Accidental Release Prevention (Cal-ARP) Program.

- a. Chapter 6.95, Article 2 of the H&SC stipulates regulatory requirements that must be followed by businesses or facilities that store or maintain acutely hazardous materials in quantities above threshold levels.
- b. Pursuant to Chapter 6.95, Article 2, §25540(a) of the H&SC, any stationary source that violates this article shall be liable in the amount of not less than \$2,000 per day in which the violation occurs.
- c. Pursuant to Chapter 6.95, Article 2, §25540(b) of the H&SC, any stationary source that knowingly violates this article after reasonable notice of the violation shall be liable in an amount not to exceed \$25,000 per day for each day in which the violation occurs.

#### Initial Penalty Matrix – Cal-ARP Program (per day of violation)

Violation of Chapter 6.95, Article 2, §25540(a) H&SC

Actual – Potential Harm	Major	Moderate	Minimal
Major Deviation	\$2,000 to \$1,200	\$1,200 to \$800	\$800 to \$400
Moderate Deviation	\$1,200 to \$800	\$800 to \$400000	\$400 to \$200
Minimum Deviation	\$800 to \$400000	\$400 to \$200	\$200 to \$0.00

Knowing Violation of Chapter 6.95, Article 2, §25540(b) H&SC after Reasonable Notice

Actual – Potential Harm	Major	Moderate	Minimal
Major Deviation	\$25,000 to \$15,000	\$15,000 to \$10,000	\$10,000 to \$5,000
Moderate Deviation	\$15,000 to \$10,000	\$10,000 to \$5,000	\$5,000 to \$2,500
Minimum Deviation	\$10,000 to \$5,000	\$5,000 to \$2,500	\$2,500 to \$0.00

### 6. Above Ground Storage Tank Program.

- a. For violations of H&SC §25270.5, the violator shall be liable for a penalty of not more than \$5,000 for each day on which the violation continues.
- b. If the violator commits a second or subsequent violation, a penalty of not more than \$10,000 for each day on which the violation continues may be imposed.

#### Initial Penalty Matrix – Above Ground Storage Tank (per day of violation)

Violation of §25270.5 H&SC

Actual – Potential Harm	Major	Moderate	Minimal
Major Deviation	\$5,000 to \$3,000	\$3,000 to \$2,000	\$2,000 to \$1,000
Moderate Deviation	\$3,000 to \$2,000	\$2,000 to \$1,000	\$1,000 to \$500
Minimum Deviation	\$2,000 to \$1,000	\$1,000 to \$50000	\$500 to \$0.00

Violation of §25270.5 H&SC (second or subsequent violations)

Actual – Potential Harm	Major	Moderate	Minimal
Major Deviation	\$10,000 to \$6,000	\$6,000 to \$4,000	\$4,000 to \$2,000
Moderate Deviation	\$6,000 to \$4,000	\$4,000 to \$2,000	\$2,000 to \$1,000
Minimum Deviation	\$4,000 to \$2,000	\$2,000 to \$1,000	\$1,000 to \$0.00



### **XIII. Enforcement Revenue**

#### **A. Background**

State law (H&SC §25404.1.1(i)) requires that all administrative penalties collected from enforcement actions be applied to the benefit of the program of origin. With the exception of a relatively small amount set aside for preliminary investigation cost recovery, ACEHD does not budget for any realized enforcement revenue. It is ACEHD's position that enforcement revenue should not be formalized as a traditional revenue stream needed for the support of necessary and appropriate program activities.

Thus, core program activities such as staff costs relating to inspections, documentation, staff training, business education and outreach, and Department and County level overhead are built into the ACEHD fee structure. After recovering the cost of implementing enforcement actions, ACEHD utilizes remaining enforcement revenue and other accumulated savings to establish program specific rate stabilization reserves that are intended to meet unanticipated expenses or to offset or buffer the need for significant fee increases

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**Appendix A - Permit Conditions and File Review Checklists**

HMMP Permit Documents Date \_\_\_\_\_

(circle) AGT UST CALArp Generator LQG SQG CESQG T.Permit PBY CA CE

Business Activities \_\_\_\_\_

Business Owner/Operator Identification \_\_\_\_\_

Hazardous Materials Inventory - Chemical Description \_\_\_\_\_

EPA # \_\_\_\_\_

Site Map \_\_\_\_\_

Emergency Response / Contingency Plan \_\_\_\_\_

AGT Spill Prevention and Counter Measures Plan \_\_\_\_\_

Inspection

(Date) \_\_\_\_\_

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UST Permit Documents Date \_\_\_\_\_

\_\_\_\_ Current CUPA Permit Application

\_\_\_\_ Business Activities

\_\_\_\_ Owner / Operator ID

\_\_\_\_ Haz Mat Inventory

\_\_\_\_ Monitoring and Spill Response Plans

\_\_\_\_ Site Map w/Leak Detection Monitoring

\_\_\_\_ Certification of Financial Responsibility

\_\_\_\_ Owner/Operator Agreement

\_\_\_\_ Secondary Containment Testing

\_\_\_\_ Cathodic Protection Testing

\_\_\_\_ UST / Line Integrity Testing

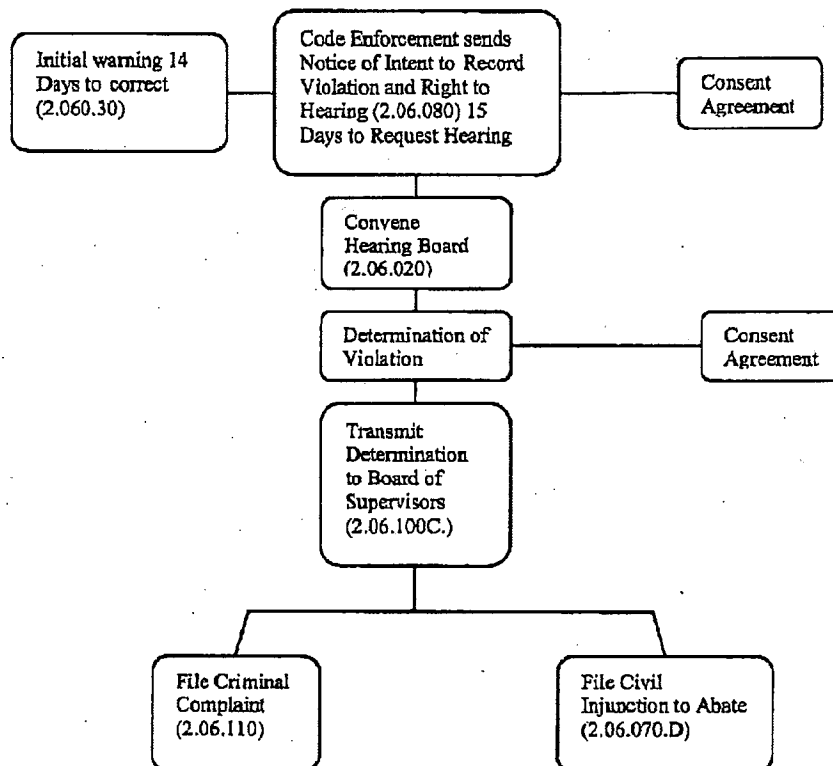
\_\_\_\_ Annual Inspection

\_\_\_\_ Tank Lining Insp.

\_\_\_\_ Annual Monitor Equip Maintenance

\_\_\_\_ Designated Operator

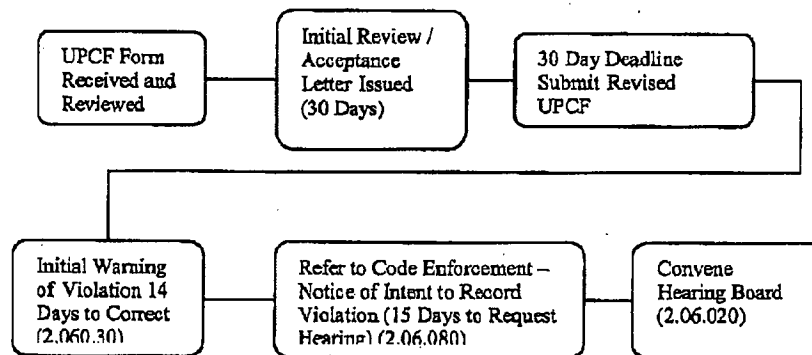
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Appendix B Flow Diagram for Chapter 2.06 Code Enforcement

### Consolidated Permit Program Plan

The Amador County Environmental Health Department (ACEHD), the designated Consolidated Unified Program Agency (CUPA), implements the Hazardous Materials Business Plan (HMBP) Program, Underground Storage Tank (UST) Program, Hazardous Waste Generator – Tiered Permitting Hazardous Waste On-Site Treatment (Generator) Programs, California Accidental Release Prevention (Cal-ARP), and the Above Ground Storage Tank (AST) Programs in Amador County. Permit applications are received on the Unified Program Consolidated Form (UPCF) or requirements. UPCF Applications are reviewed within thirty days and a review letter identifying omissions in the submitted application and requesting revisions to the UPCF sent to the regulated facility. If the UPCF Application is deemed complete an acceptance letter is generated and the HMBP submitted to the local emergency responders with a cover letter. The cover letter cautions that portions of the HMBP are confidential and that access to the HMBP should be limited.

A general Hazardous Materials permit covering the HMP program is issued annually. A UST permit is issued for five years. HMP and UST permits are conditioned on compliance all permit conditions and payment annual fees. In instances of noncompliance with the initial request for an HMBP nor the request for revisions to an HMBP within 30 days an initial warning is issued providing 14 days to correct the violations. Continued non compliance is referred to Code enforcement as described in the Inspection and Enforcement Policy.



**HAZARDOUS MATERIALS PERMIT UPDATE***Please Complete the Form and Return with the Permit Fee***FACILITY:** \_\_\_\_\_

Site Address: \_\_\_\_\_ Assessor's Parcel No: \_\_\_\_\_

City: \_\_\_\_\_

Mailing Address: \_\_\_\_\_ Site Telephone: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

**OWNER:** \_\_\_\_\_

Mailing Address: \_\_\_\_\_ Telephone: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

**Nature of Business:** \_\_\_\_\_**EMERGENCY NOTIFICATION:**

	Name	Day Phone	Night Phone
Contact #1			
Contact #2			

**Check appropriate box:**☐ Certification

As the Business owner or officially designated representative, I attest under penalty of perjury, that the information contained in the most recently submitted hazardous materials inventory submitted to Amador County Environmental Health Department (CUPA) is complete, accurate, and up to date; and that there has been no change in the quantity of hazardous materials previously reported in the most recently submitted hazardous materials inventory; and no hazardous materials subject to inventory requirements are being handled that are not listed in the most recently submitted hazardous materials inventory.

Owner/Operator Signature \_\_\_\_\_ Date: \_\_\_\_\_

-or-

☐ An updated hazardous materials inventory will be submitted by March 1, 2006.

Owner/Operator Signature \_\_\_\_\_ Date: \_\_\_\_\_

## **Deficiencies and State Response to the corrective actions taken by Amador County's CUPA**

*(Deficiencies are listed in the same order as the September 8, 2006, evaluation report.)*

### Unified Program Administration

1. **Deficiency:** The CUPA is not completing Self-Audits by September 30<sup>th</sup> each year as required.

**Cal/EPA Response:** The CUPA submitted the FY 05/06 Self-Audit; therefore, Cal/EPA considers this deficiency corrected; no further updates are necessary.

2. **Deficiency:** The CUPA's Permit Procedures Plan does not include a flow chart including time lines and an appeals process.

**Cal/EPA Response:** The CUPA's corrective action for this deficiency is sufficient. Cal/EPA considers this deficiency corrected; no further updates are necessary.

3. **Deficiency:** The CUPA's Permit Procedures Plan does not contain addenda that will be used to document permit conditions for each applicable element of the Unified Program.

**Cal/EPA Response:** The CUPA's corrective action for this deficiency is sufficient. Cal/EPA considers this deficiency corrected; no further updates are necessary.

4. **Deficiency:** The CUPA does not have AEO forms incorporated in their Inspection and Enforcement Plan.

**Cal/EPA Response:** The CUPA's response indicates, "After approval, the Administrative Enforcement Order forms will be placed on County website...". Cal/EPA considers this deficiency in progress of being corrected. Provide Cal/EPA with copies of the approved AEO forms in the next progress report due April 6, 2007. If the AEO forms have not been approved, provide Cal/EPA with copies of the draft AEO forms.

5. **Deficiency:** The CUPA does not have current technical staff trained in writing enforcement orders.

**Cal/EPA Response:** This deficiency is in progress of being corrected. Cal/EPA suggests the following trainings: 1) The February 2007, CUPA

Conference, [www.calcupanet.net](http://www.calcupanet.net) - Enforcement options and violation classification is offered on Thursday 2/15 from 8-10 AM, and will cover all programs (not just HW) classification and orders; 2) Compliance School, [www.compliance.org](http://www.compliance.org), Tel: 1-800-337-1422. This is a relatively short (2-day) intro to HW if the CUPA Conference is not realistic or causes scheduling conflicts.

Other resources which are a bit more time intensive include:

3) Cal-EPA Academy, [www.calepa.ca.gov](http://www.calepa.ca.gov), Basic Inspector Academy and Enforcement Training, Tel: 916-322-2227; 4) Western States Project [www.regionalassociations.org/info.cfm](http://www.regionalassociations.org/info.cfm), Tel 602-542-8510; and

5) Lastly, DTSC staff will make themselves available for a day of 1-on-1 discussion and review if needed. Please have Mr. Fournier contact Mickey Pierce to arrange this.

6. **Deficiency:** The CUPA is not completing Summary Reports by September 30th of each year. The 01/02 and 02/03 Summary Reports were filed late, January 31, 2003 for 01/02, and December 19, 2003 for 02/03 fiscal years.

**Cal/EPA Response:** The CUPA submitted the FY 04/05 and 05/06 Summary Reports; therefore, Cal/EPA considers this deficiency corrected.

#### Hazardous Materials Release Plans and Inventory Programs

7. **Deficiency:** The CUPA's Area Plan does not contain all the required elements.

**Cal/EPA Response:** The CUPA will review the area plan and make the necessary revisions, addressing the required elements described in Title 19, Sections 2722-2728. Submit to the OES evaluator a copy of the area plan and a letter certifying that the review has been completed and any necessary changes have been made by the next progress report due April 6, 2007. If the CUPA is unable to submit the required information by the next progress report due April 6, 2007, the CUPA shall submit an action plan to achieve the required outcome.

Hazardous Material Emergency Preparedness (HMEP) grant funding is available for supplementing the area plan update revision costs. For information contact Michael Warren, OES Fire & Rescue Branch, Hazardous Materials Unit, Grant Administrator, by phone at (916) 845-8772, or by email at [Michael.Warren@oes.ca.gov](mailto:Michael.Warren@oes.ca.gov). HMEP information can be accessed at OES' website: [www.oes.ca.gov](http://www.oes.ca.gov).



8. **Deficiency:** The CUPA does not have a process and timeframes to follow for correction of deficiencies.

**Cal/EPA Response:** The CUPA's corrective action for this deficiency is sufficient. Cal/EPA and OES consider this deficiency corrected; no further updates are necessary.

9. **Deficiency:** CUPA is not inspecting all the businesses subject to the business plan program for compliance at least once every three years.

**Cal/EPA Response:** In the update 1 dated 10/6/06, the CUPA responds to this deficiency with "Business Plan inspections have not been conducted due to lack of resources. The 2006 self-audit addresses this concern and identifies corrective measures. (see Attached 2006 self audit)".

Although the CUPA addresses this deficiency and identifies corrective measures, this deficiency is still in the process of being corrected. The CUPA shall report on their progress of meeting the Business Plan frequency in the next progress report update, and continue with the efforts being made to correct this deficiency.

10. **Deficiency:** The CUPA is not requiring businesses, subject to the hazardous materials reporting requirements, to annually submit their hazardous material inventory or certification statement.

**Cal/EPA Response:** In update 1 dated 10/6/06, the CUPA responds to this deficiency with "An inventory reporting, contact update, and certification statement is sent with the annual billing for completion prior to issuing an operating permit. (see attached HMBP Certification Statement)."

The CUPA's 2006 self-audit does contain a further explanation of the inclusion of their "Hazardous Materials Permit Update" form with their annual billing for businesses to complete. However, a follow-up process, to ensure that all businesses submit this form or an updated business owner/operator identification form and/or Hazardous Material Inventory – Chemical Description form, and a review process, to determine if the submitted information is complete, accurate, and up-to-date, is not explained. According to the 2006 self-audit, it appears that only 67 of the 180 (37%) businesses submitted documentation.

The information submitted by the CUPA and the actions taken by the CUPA to ensure that businesses, subject to the hazardous materials reporting requirements, annually submit their hazardous material inventory or certification statement are good steps to addressing this deficiency.

However, only 37% of all the businesses subject to the requirements appear to be complying. The CUPA shall report on their progress of ensuring all businesses meet the annual inventory submittal or certification requirements in the next progress report due April 6, 2007, and continue with the efforts being made to correct this deficiency.

- 11. Deficiency:** The CUPA is not requiring a business to certify the review and update of their entire business plan every three years. To correct this deficiency, the CUPA will ensure that each handler reviews the business plan, submitted pursuant to subdivision (a) or (b) at least once every three years after the initial submission to determine if a revision is needed and shall certify to the administering agency that the review was made and that any necessary changes were made to the plan. A copy of those changes shall be submitted to the administering agency as a part of that certification.

**Cal/EPA Response:** Upon review of the evaluation report and update 1, Cal/EPA finds no documentation supporting the correction of this deficiency. The CUPA shall provide an update in the next progress report due April 6, 2007, documenting the actions the CUPA has taken or is currently taking to correct this deficiency.

#### California Accidental Release Prevention Program

- 12. Deficiency:** The CUPA has not established a dispute resolution procedure.

**Cal/EPA Response:** In a letter dated April 8, 2005, the CUPA indicated, "Existing Amador County Municipal Code Chapter 2.06 Code Enforcement provides a process for dispute resolution." Provide Cal/EPA with a copy of this document in order for Cal/EPA to determine if this addresses all the requirement of Title, 19, CCR, Section 2780.1.

- 13. Deficiency:** The CUPA is not fully implementing the CalARP Program for all stationary sources.

**Cal/EPA Response:** According to the evaluation report, the CUPA responded "the CUPA will fully implement the CalARP Program for all stationary sources." The Final Findings direct the CUPA to "develop a mechanism to implement the CalARP Program for all stationary sources." Upon review of update 1 dated 10/6/06, OES finds no documentation addressing this mechanism. The CUPA shall provide an update in the next progress report documenting the progress on correcting this deficiency.

The California Accidental Release Prevention (CalARP) Program Administering Agency Guidance is available at OES' website:

[www.oes.ca.gov](http://www.oes.ca.gov). This document provides general guidance to help CUPAs implement and enforce the CalARP Program.

- 14. Deficiency:** The CUPA has determined that stationary source(s) may pose an accident risk and has not requested the preparation and submission of all RMP(s).

**Cal/EPA Response:** According to the evaluation report, the CUPA responded "the CUPA will request the preparation and submission of an RMP from all stationary sources that may pose an accidental risk." The Final Findings direct the CUPA to "develop a mechanism so that when the CUPA determines stationary source(s) may pose an accident risk, the CUPA requests the owner/operator of these stationary sources prepare and submit an RMP." Upon review of the update 1 dated 10/6/06, OES finds no documentation addressing this mechanism. The CUPA shall provide an update in the next progress report due April 6, 2007, documenting the progress on correcting this deficiency.

- 15. Deficiency:** The CUPA is not ensuring the owners/operators update their RMPs or OCA as required.

**Cal/EPA Response:** According to the evaluation report, the CUPA responded "the CUPA will ensure that owner/operators update their RMP's or OCA as required." The Final Findings direct the CUPA to "develop a mechanism to ensure the owner/operators update their RMPs or OCA as required." Upon review of update 1 dated 10/6/06, OES finds no documentation addressing this mechanism. The CUPA shall provide an update in the next progress report due April 6, 2007, documenting the progress on correcting this deficiency.

- 16. Deficiency:** The CUPA is not verifying updates and revalidation to the PHA or Hazard review at least every three years.

**Cal/EPA Response:** According to the evaluation report, the CUPA responded "the CUPA will verify updates and validation of the PHA or Hazard review every three years." The Final Findings direct the CUPA to "develop a mechanism to ensure at least every five years after the completion of the initial PHA for processes covered by Title 19, Division 2, Chapter 4.5, Article 6, the PHA is updated and revalidated as required, to assure that the PHA is consistent with the current process." Upon review of the update 1 dated 10/6/06, OES finds no documentation addressing this mechanism. The CUPA shall provide an update in the next progress report due April 6, 2007, documenting the progress on correcting this deficiency.

**17. Deficiency:** The CUPA is not verifying that the owner/operator has conducted a compliance audit at least every three years.

**Cal/EPA Response:** According to the evaluation report, the CUPA responded "the CUPA will verify that the owner/operator has conducted a compliance audit at least every three years." The Final Findings direct the CUPA to "develop a mechanism to verify that owner/operators certify that they have evaluated compliance with the provisions of Title 19, Division 2, Chapter 4.5, Article 5, at least every three years to verify that the procedures and practices developed are adequate and are being followed." Upon review of update 1 dated 10/6/06, OES finds no documentation addressing this mechanism. The CUPA shall provide an update in the next progress report due April 6, 2007, documenting the progress on correcting this deficiency.

**18. Deficiency:** The CUPA is not auditing stationary sources.

**Cal/EPA Response:** According to the evaluation report, the CUPA responded "the CUPA will audit stationary sources." The Final Findings direct the CUPA to "develop a mechanism to periodically audit RMPs submitted under Title 19, Division 2, Chapter 4.5, Article 3 to review the adequacy of such RMPs and require revisions of RMPs when necessary to ensure compliance with Article 3." Upon review of the October 6, 2006, OES finds no documentation addressing this mechanism. The CUPA shall provide an update in the next progress report due April 6, 2007, documenting the progress on correcting this deficiency

#### Underground Storage Tank Program

**19. Deficiency:** The UST facility files reviewed either lacked plot plans, or the plot plans did not contain all the required elements. The plot plans were missing the location (tank, ATG, sump, UDC, monitoring panel, etc) of where the monitoring is performed.

**Cal/EPA Response:** The CUPA's corrective action for this deficiency is sufficient. Cal/EPA considers this deficiency corrected; no further updates are necessary.

**20. Deficiency:** The UST operating permit does not have a statement that the operating permits, including the monitoring, response, and facility plot plans are to be maintained on site.

**Cal/EPA Response:** The CUPA's corrective action for this deficiency is sufficient. Cal/EPA considers this deficiency corrected; no further updates are necessary.

## Hazardous Waste Generator/Tiered Permitting Program

**21. Deficiency:** The CUPA has not conducted any inspections of hazardous waste generators within its jurisdiction over the past triennial cycle.

**Cal/EPA Response:** The CUPA's corrective action for this deficiency is adequate. Cal/EPA considers this deficiency corrected; no further updates are necessary.

**22. Deficiency:** The CUPA did not provide a summary of violations/notice to comply to the business at the end of the oversight inspection during the date of inspection.

**Cal/EPA Response:** The CUPA's corrective action for this deficiency is adequate. Cal/EPA considers this deficiency corrected; no further updates are necessary.